



PENSION BENEFIT GUARANTY CORPORATION

Pendency for Request for Approval of Special Withdrawal Liability Rules: Motion Picture Laboratory Technicians and Film Editors Local 780 Pension Fund

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of pendency of request.

SUMMARY: This notice advises interested persons that the Pension Benefit Guaranty Corporation (PBGC) has received a request from the Motion Picture Laboratory Technicians and Film Editors Local 780 Pension Fund (the “Plan”) for approval of a plan amendment providing for special withdrawal liability rules. Under PBGC’s regulation on Extension of Special Withdrawal Liability Rules, a multiemployer pension plan may, with PBGC approval, be amended to provide for special withdrawal liability rules similar to those that apply to the construction and entertainment industries. Such approval is granted only if PBGC determines that the rules apply to an industry with characteristics that make use of the special rules appropriate and that the rules will not pose a significant risk to the pension insurance system. Before granting an approval, PBGC’s regulations require PBGC to give interested persons an opportunity to comment on the request. The purpose of this notice is to advise interested persons of the request and to solicit their views on it.

DATES: Comments must be submitted on or before [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Comments may be submitted by any of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the instructions for submitting comments.
- Email: reg.comments@pbgc.gov. Refer to the Motion Picture Local 780 Plan in the subject line.

- Mail or Hand Delivery: Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024-2101.

Commenters are strongly encouraged to submit public comments electronically. PBGC expects to have limited personnel available to process public comments that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable.

All submissions must include the agency's name (Pension Benefit Guaranty Corporation, or PBGC) and refer to the Motion Picture Local 780 Plan. Comments received will be posted without change to PBGC's website, www.pbgc.gov, including any personal information provided. Do not submit comments that include any personally identifiable information or confidential business information.

Copies of comments may also be obtained by writing to Disclosure Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024-2101 or calling 202-326-4040 during normal business hours. If you are deaf, hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services.

FOR FURTHER INFORMATION CONTACT: Daniel Liebman, Deputy General Counsel, Program Law and Policy Department (liebman.daniel@pbgc.gov; 202-229-6510), Benjamin Kelly, Deputy Assistant General Counsel, Multiemployer Law Division (kelly.benjamin@pbgc.gov; 202-229-4097), Office of the General Counsel, 445 12th Street SW, Washington, DC 20024-2101. If you are deaf, hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION:

Background

Section 4203(a) of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980 (ERISA), provides that a complete withdrawal from a multiemployer plan generally occurs when an employer permanently ceases to have an obligation to contribute under the plan or permanently ceases all covered operations under the plan. Under section 4205 of ERISA, a partial withdrawal generally occurs when an employer: (1) Reduces its contribution base units by seventy percent in each of three consecutive years; or (2) permanently ceases to have an obligation under one or more but fewer than all collective bargaining agreements under which the employer has been obligated to contribute under the plan, while continuing to perform work in the jurisdiction of the collective bargaining agreement of the type for which contributions were previously required or transfers such work to another location or to an entity or entities owned or controlled by the employer; or (3) permanently ceases to have an obligation to contribute under the plan for work performed at one or more but fewer than all of its facilities, while continuing to perform work at the facility of the type for which the obligation to contribute ceased.

Although the general rules on complete and partial withdrawal identify events that normally result in a diminution of the plan's contribution base, Congress recognized that, in certain industries and under certain circumstances, a complete or partial cessation of the obligation to contribute normally does not weaken the plan's contribution base. For that reason, Congress established special withdrawal rules for the construction and entertainment industries. For construction industry plans and employers, section 4203(b)(2) of ERISA provides that a complete withdrawal occurs only if an employer ceases to have an obligation to contribute under a plan and the employer either continues to perform previously covered work in the jurisdiction of the collective bargaining agreement or resumes such work within 5 five years without renewing the obligation to contribute at the time of resumption. In the case of a plan terminated by mass withdrawal (within the meaning of section 4041(A)(2) of ERISA), section 4203(b)(3) provides that the 5-year restriction on an employer's resuming covered work is reduced to 3

years. Section 4203(c)(1) of ERISA applies the same special definition of complete withdrawal to the entertainment industry, except that the pertinent jurisdiction is the jurisdiction of the plan rather than the jurisdiction of the collective bargaining agreement. In contrast, the general definition of complete withdrawal in section 4203(a) of ERISA includes the permanent cessation of the obligation to contribute regardless of the continued activities of the withdrawn employer.

Congress also established special partial withdrawal liability rules for the construction and entertainment industries. Under section 4208(d)(1) of ERISA, “[a]n employer to whom section 4203(b) (relating to the building and construction industry) applies is liable for a partial withdrawal only if the employer’s obligation to contribute under the plan is continued for no more than an insubstantial portion of its work in the craft and area jurisdiction of the collective bargaining agreement of the type for which contributions are required.” Under section 4208(d)(2) of ERISA, “[a]n employer to whom section 4203(c) (relating to the entertainment industry) applies shall have no liability for a partial withdrawal except under the conditions and to the extent prescribed by the [PBGC] by regulation.”

Section 4203(f)(1) of ERISA provides that PBGC may prescribe regulations under which plans in other industries may be amended to provide for special withdrawal liability rules similar to the rules prescribed in section 4203(b) and (c) of ERISA. Section 4203(f)(2) of ERISA provides that such regulations shall permit the use of special withdrawal liability rules only in industries (or portions thereof) in which PBGC determines that the characteristics that would make use of such rules appropriate are clearly shown, and that the use of such rules will not pose a significant risk to the insurance system under title IV of ERISA. Section 4208(e)(3) of ERISA provides that PBGC shall prescribe by regulation a procedure by which plans may be amended to adopt special partial withdrawal liability rules upon a finding by PBGC that the adoption of such rules is consistent with the purposes of title IV of ERISA.

PBGC’s regulations on Extension of Special Withdrawal Liability Rules (29 CFR part 4203) prescribe procedures for a multiemployer plan to ask PBGC to approve a plan amendment

that establishes special complete or partial withdrawal liability rules. Section 4203.5(b) of the regulation requires PBGC to publish a notice of the pendency of a request for approval of special withdrawal liability rules in the Federal Register, and to provide interested parties with an opportunity to comment on the request.

The Request

PBGC received a request from the Plan, dated November 30, 2021, for approval of a plan amendment providing for special withdrawal liability rules. On May 26, 2022, the Plan provided supplemental information in response to a request from PBGC. PBGC's summary of the actuarial reports provided by the Plan may be accessed on PBGC's website (<https://www.pbgc.gov/prac/pg/other/guidance/multiemployer-notices.html>). A copy of the Plan's submission can be requested from the PBGC Disclosure Officer. The fax number is 202-229-4042. It may also be obtained by writing to the Disclosure Officer, PBGC, 445 12th Street SW, Washington, DC 20024.

The Plan is a multiemployer pension plan jointly maintained by Local Union No. 780 of the International Alliance of Theatrical Stage Employees (the "Union") and employers that are signatory to collective bargaining agreements with the Union. The Plan covers approximately 2,000 participants. Most of the employers that contribute to the Plan have been awarded contracts or subcontracts to provide non-military support services at military bases and other federal facilities.

The proposed amendment would create special withdrawal liability rules for employers ("Federal Contractor Employers") that have an obligation to contribute to the Plan for work performed under a contract or subcontract to provide services to a federal government agency (a "Federal Contract"). The Proposed Amendment would create special withdrawal liability rules for a Federal Contractor Employer that loses one or more Federal Contracts to an unrelated employer (a "Successor Employer"). The Plan asserts that Federal Contracts are periodically re-

bid, and that “the employees and the facility generally remain the same” after a Federal Contractor Employer loses a Federal Contract to a Successor Employer.

The Plan asserts that the industry covered by the Plan is “[n]ot unlike the construction industry” in that Federal Contractor Employees

use the same “pool” of workers at the facility regardless of which Employer currently is awarded the contract. Contributions supporting future benefit accruals and satisfying any unfunded past liabilities are made on behalf of the same pool of employees and the same number of [CBUs]. Consequently, the change in the signatory Employer under a new contract has little or no effect on the funded position of the Pension Fund.

The Plan asserts that the proposed amendment may induce new Federal Employer Contractors to bid on covered work. That, in turn, will “continue the improvement in the health of the Pension Fund and reduce the potential risk and exposure to the PBGC.”

The Plan’s request includes the actuarial data on which the Plan relies to support its contention that the amendment will not pose a significant risk to the insurance system under title IV of ERISA.

Special Withdrawal Liability Rules

The proposed amendment would be effective for (i) complete withdrawals under section 4203(a) of ERISA on or after January 1, 2021; (ii) partial withdrawals under section 4205(a)(1) of ERISA during any three-year testing period beginning on or after January 1, 2019; and (iii) partial withdrawals under section 4205(a)(2) of ERISA on or after January 1, 2021.

Complete Withdrawals

A complete withdrawal under section 4203(a) of ERISA will not occur if a Federal Contractor Employer ceases to have an obligation to contribute to the Plan because it loses all Federal Contracts that required contributions to the Plan to a Successor Employer, and is performing no other work under a collective bargaining agreement that requires contributions to the Plan, provided that:

(1) Substantially all the employees for whom the Federal Contractor Employer was obligated to contribute to the Plan continue to perform work under one or more Federal Contracts with a Successor Employer (including any Successor Employer subsequent to the initial Successor Employer); and

(2) For the five Plan Years following the Plan Year in which the Federal Contractor Employer lost all of its Federal Contracts to a Successor Employer, the Successor Employer has an obligation to contribute to the Plan for work performed under the Federal Contractor Employer's Federal Contract:

(a) At the same or a higher contribution rate as the highest contribution rate of the Federal Contractor Employer; and

(b) For substantially the same number of contribution base units as those for which the Federal Contractor Employer had an obligation to contribute in the final Plan Year preceding the Plan Year in which the Federal contractor lost all of its Federal Contracts.

Notwithstanding these rules, the Federal Contractor Employer will experience a complete withdrawal as of the date it ceased to have an obligation to contribute to the Plan or ceased all covered operations under the Plan if, within the five Plan Years following the Plan Year in which the Federal Contractor Employer lost all of its Federal Contracts, either:

(1) The Federal Contract of the Successor Employer is terminated, and no subsequent Successor Employer is obligated to contribute to the Plan under the conditions described in paragraphs 2(a) and (b); or

(2) The Successor Employer ceases contributions to the Plan or fails to contribute to the Plan under the conditions described in paragraphs 2(a) and (b).

Partial Withdrawals

If a Federal Contractor Employer loses one or more, but less than all, of its Federal Contracts to a Successor Employer, or if the Federal Contractor Employer loses all of its Federal Contracts to a Successor Employer but continues to have an obligation to contribute to the Plan

for other operations pursuant to a collective bargaining agreement, the following rules shall apply.

The contribution base units attributable to the work performed under the Federal Contract shall be excluded in determining whether the Federal Contractor has experienced a partial withdrawal under section 4205(a)(1) of ERISA, and the loss of the Contract shall not be considered a facility closing, provided that:

(1) For the five Plan Years following the Plan Year in which the Federal Contractor Employer lost the applicable Federal Contract to a Successor Employer, the Successor Employer has an obligation to contribute to the Plan for work performed under the Federal Contractor Employer's Federal Contract:

(a) At the same or a higher contribution rate as the highest contribution rate of the Federal Contractor Employer; and

(b) For substantially the same number of contribution base units as those for which the Federal Contractor Employer had an obligation to contribute in the final Plan Year preceding the Plan Year in which the Federal contractor lost the Federal Contract.

Notwithstanding these rules, the Federal Contractor Employer will experience a partial withdrawal if:

(1) Within the 5 Plan Years following the Plan Year in which the Federal Contractor Employer lost one or more but less than all of its Federal Contracts, the Successor Employer's Federal Contract is terminated, and no subsequent Successor Employer is obligated to contribute to the Plan under the conditions described in paragraphs 1(a) and (b);

(2) Within the 5 Plan Years following the Plan Year in which then Federal Contractor Employer lost one or more but less than all of its Federal Contracts, the Successor Employer ceases contributions to the Plan or fails to contribute to the Plan under the conditions described in paragraphs 1(a) and (b); or

(3) The Federal Contractor Employer either loses a Federal Contract to a Successor Employer or bargains out of a Federal Contract and there is not any Successor Employer with an obligation to contribute to the Plan under the conditions described in paragraphs 1(a) and (b).

The date of a partial withdrawal assessed under these rules shall be:

(1) In the event of a 70 percent contribution decline under section 4205(a)(1) of ERISA, the last day of the third year in the applicable three-year testing period beginning on or after January 1, 2019; and

(2) In the event of a partial cessation of such Federal Contractor Employer's contribution obligation under section 4205(a)(2) of ERISA, the year in which the facility closed or the Federal Employer Contractor bargained out of the Federal Contract.

Bona Fide Sale of Assets

If the Federal Contractor Employer engages in a bona fide, arm's-length sale of assets to an unrelated purchaser ("Buyer"), the Buyer will be treated as a Successor Employer.

Comments

All interested persons are invited to submit written comments on the pending exemption request. All comments will be made part of the administrative record.

Issued in Washington, DC, by:

Gordon Hartogensis,
Director,
Pension Benefit Guaranty Corporation.